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March 12, 2004

VIA Electronic Mail to [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)

Ms. Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Ave., N.W.  
Washington, D.C. 20551

Re: Docket No. R-1176. Proposed Rule amending Regulation CC. Availability of  
Funds and Collection of Checks

Dear Ms. Johnson:

**This** letter is written to comment on the proposed amendments to Regulation CC on behalf of the Connecticut **Bankers** Association (the "CBA"), a trade association representing approximately 78 financial institutions of **all** sizes throughout the state of Connecticut. At a recent CBA industry meeting approximately 50 bank operations personnel and compliance officers were present to participate in a discussion of the requests for comment on the proposed regulations, and the views expressed at that meeting are reflected in the comments **below**.

**The** CBA is generally supportive of **the** way in which the proposed regulations would implement the **Check** Clearing for the 21<sup>st</sup> Century Act (the "**Check** 21 Act"). The following comments are made with respect to the specific requests **for** comment made by the Federal Reserve Board (the "Board").

1. *Are there benefits of allowing a returning bank to indorse checks on the front and to include additional information in their indorsements?* Until the proposed rule is implemented, it is difficult to know what **issues** may arise relating to **the** amendments to the indorsement rules. However, at **this** time, the CBA generally supports allowing the returning **bank** to have more flexibility with regard **to** its indorsement, if **this** flexibility is **used** by **the** returning **bank** to make it easier to identify the returning bank. Thus, the CBA supports allowing the returning bank to have the flexibility to indorse **checks** on the **front**, to the extent that **the** indorsement is placed on **the** front to avoid overlapping other indorsements and causing **one** or more **of** the indorsements

to become illegible. At this time, the CBA also supports allowing the returning bank to provide, at its option, additional information in its indorsements, **but only** if such information is included for the purpose of making it easier to identify the returning bank, and if such additional information does not cause the indorsements to overlap **and** become illegible.

2. *Should a check that purports to be a substitute check but fails to meet the substitute check requirements be treated as a substitute check for the purpose the indemnity, warranty and consumer notice provisions?* The CBA supports treating a check that purports to be a substitute check as a substitute check for the indemnity, warranty and notice provisions. The purported checks that fail to meet the substitute check requirements are likely to raise more indemnity **and** warranty issues than a successfully reconverted substitute check, and other parties to the check collection process should not be denied their indemnity **and** warranty claims because a reconverting bank fails to successfully complete the reversion process, **or** because a party that is **not** authorized to reconvert a check attempts the reversion.

3. *Should the use of information from a MICR line of a check to create an ACH debit be covered by the same warranties that are made when a substitute check is transferred or presented for payment?* The CBA does not support making ACH debits subject to the warranty provisions of the proposed regulations. ACH entries are already subject to a complex set of warranties under the NACHA rules. Subjecting ACH entries to additional warranty provisions is, therefore, not necessary **and** will lead to confusion relating to the interaction between the two sets of warranties.

4. *Should the term "banking day" be used to clarify when a written claim is received by a bank?* The CBA supports the use of the term "banking day" because a "banking day" is a day that a bank is open for substantially all of its business. Use of this term will avoid a situation in which a bank is deemed to have received a claim on a day that it is not **open** either due to an emergency **or** due to a state holiday that is not a federal holiday.

5. *If a recredit is reversed, should the interest earned on the recredited amount also be reversed?* The CBA supports reversing interest if a recredit is **reversed** to avoid unjustly enriching the customer and unjustly penalizing the financial institution.

6. *Should additional commentary on the regulatory provision relating to expedited recredit for consumers be provided?* The CBA believes **that** it would be helpful to provide some additional examples relating to this section.

7. *Should notice relating to a consumer's rights with regard to a substitute check be provided at the time an original or a copy of a check is requested or only when a substitute check is actually provided in response to a request for a check?* If the Board will only choose one alternative, the CBA supports the second alternative because the disclosure will be more meaningful to the consumer at the time the substitute check is provided. However, the CBA believes that it would be preferable to give banks the alternative of providing the notice at either time.

8. *Should electronic delivery of a notice of the denial of a recredit claim be permitted, even though this would require providing an electronic copy of the check?* The CBA believes that if a consumer has agreed to the electronic delivery of documents relating to his or her account, or if the consumer specifically agrees to receive the notice of denial or the notices relating to the claim for recredit electronically, then the electronic delivery of the notice of denial and the copy of the check should be permitted. A consumer that agrees to electronic delivery will most likely find this to be a convenience. The consumer could still be given the right to request a paper copy of the check if the quality of the copy of the original check is adversely affected by the electronic delivery.

9. *Should the Board include in the regulation model notices for expedited recredit claims, even though the Check 21 Act does not provide a safe harbor with regard to the use of these notices?* The CBA believes that the model notices are helpful and should be included.

10. *How should industry standards be addressed in the regulations?* The CBA agrees with the Board's approach of listing specific industry standards in the commentary rather than in the regulations. The commentary should be clear that if the standard changes, the new standards will apply even if the commentary is not yet updated, in any cases in which that is the Board's position.

The Board only lists industry standards in the commentary if only one industry standard exists. The CBA feels that the Board should consider listing industry standards in the commentary by way of examples in situations where more than one standard exists. Such illustrative examples could be helpful to financial institutions without mandating that a particular standard be used.

11. *Should the relation of Check 21 to other laws be clarified in the commentary?* The CBA believes that the commentary examples should more thoroughly explain the potential liability that may result if another law interacts with Check 21. For example, the commentary explains that if duplicate payment of a substitute check results in the return of other checks for insufficient funds, the customer could have a wrongful dishonor claim against the bank under the UCC. The commentary does not explain, however, that a wrongful dishonor claim can result in consequential damages that result from nonpayment of the check. Such consequences should be more thoroughly explained in the commentary.

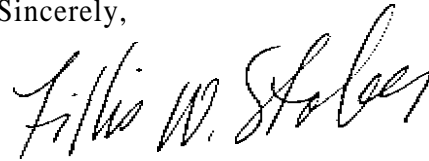
12. *Should the UCC warranty that a remotely created draft has been properly authorized be included in the Check 21 rules?* The CBA supports including that warranty in the Check 21 rules. Not all states have adopted the UCC revisions relating to remotely created drafts, and the inclusion of that warranty in the Check 21 regulations will facilitate recovery against a person using remotely created drafts without authorization.

13. *Should the regulation be drafted in a more plain language format?* The CBA believes that the language of the proposed regulations is sufficiently clear.

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Thank you for giving us the opportunity to submit these comments. **Please** feel free *to* call me **if** you have any questions on the contents of this letter.

Sincerely,

A handwritten signature in black ink, reading "Fillis W. Stober". The signature is written in a cursive, flowing style.

Fillis W. Stober

FWS/dmb

cc: Lindsey Pinkham

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